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Peace Agreements and the Institutionalisation of Human Rights – a multi-level analysis

Abstract

Parties to peace agreements have long considered human rights as central to the consolidation of peace and democracy in post-conflict settings. Yet, understanding of the formal institutional mechanisms that peace processes put in place to promote and protect human rights is rather limited. This article informs this gap using an original multi-level analysis of 126 peace agreements and three main categories of institutions involved in securing human rights implementation after conflict – international and regional institutions for promoting and protecting rights, as well as national human rights ombudsmen and commissions. We find that peace agreements localise human rights implementation after the end of conflict, relying more on national human rights institutions than international ones to monitor and implement human rights domestically and assist national executives with processes of transition away from conflict and toward liberal democracy. While regional and international institutions like the United Nations and the Organisation for Security and Cooperation in Europe are included in some peace agreements, their roles are much more limited and nearly exclusively aimed at offering support to new and existing national human rights commissions. We illustrate our analysis with two case studies of peace agreements in Cambodia and Bosnia and Herzegovina.

Keywords

Human rights, peace agreements, national human rights institutions, international institutions, regional institutions

Introduction

Since the Cold War, peace processes and peace agreements have increasingly become key mechanisms to end wars and create lasting peace and security. The success of peace agreements depends to a large extent on their ability to foresee possible future problems and to define at least a pathway capable of addressing them^{1,2} To this end, human rights provisions have become central to many peace processes and peace agreements, motivating transitional justice work and institutional building as part of liberal democratisation processes.³ To safeguard the enforcement of human rights commitments, peace agreements now often incorporate multiple implementation mechanisms and strategies.

Scholars and practitioners have offered important insights into the evolution of human rights and peacebuilding as well as the value and pitfalls of human rights for peace processes

and peace agreements⁴. Our understanding of the concrete ways which peace agreements propose to secure the implementation of human rights provisions and to guarantee that specific implementation mechanisms contribute to peace is far from complete. Be they multinational institutions such as the United Nations (UN), organisations with regional scope of membership like the Organisation for Security and Co-operation in Europe (OSCE), or national human rights institutions (NHRIs), formal institutions with mandates that include human rights promotion and protection have played key roles in monitoring and aiding national governments with the implementation of human rights commitments made in peace agreements. Legal and international politics scholars have written on the significant roles that national human rights institutions play in protecting rights domestically, and the role that international institutions play in the cross-border diffusion and the implementation of human rights norms. Yet, we have much to learn about the roles that formal national, regional, and international institutions with human rights remits play in the efforts to end conflict and bring about peace through peace agreements.

In this article, we examine the ways in which human rights are institutionalized during peacebuilding efforts through the inclusion in peace agreements of formal institutions mandated to monitor, implement, and promote human rights. Our analysis explores what type of human rights institutions – international, regional, or national – are most common and why, and discusses what specific functions peace agreements prescribe to human rights institutions, showing how these institutional choices posit human rights as playing a central role in the construction of political settlements. As our analysis will show, NHRIs, such as human rights commissions and ombudsmen, are the most prevalent formal bodies with human rights mandates in peace agreements. Through their work, they are seen as key contributors to democratization processes, the promotion of respect for the rule of law and the transition to durable peace.⁵ The prevalence of NHRIs as the institutional mechanism used to implement

human rights provisions compared to regional and international human rights institutions demonstrates the importance of local and national human rights mechanisms as principle implementing actors even if they are drawing on international human rights standards in their mandates. Although a number of academic studies have offered valuable insights into the ways in which NHRIs operate in conflict contexts⁶, most evidence to date is not comparative in nature and is largely based on country and institutional case studies.

Our analysis makes use of data from the PA-X peace agreements database, to identify and code the different roles that peace agreements grant to human rights institutions and the different types of human rights institutions that are prescribed in agreements.⁷ There are 1518 peace agreements in Version 1 of the PA-X database; of those 99 mention a national human rights institution, and 44 mention a regional or international human rights institution.⁸ There is some overlap with agreements that contain provisions for national as well as regional and international institutions, and in total, we analyse 126 agreements. Agreements that include provisions related to human rights institutions span every region and time frame from the Cambodia agreements in the early 1990s to much more recent agreements in Syria and Yemen. We use qualitative content analysis to investigate the varied functions human rights institutions are mandated to provide across the large sample of peace agreements. We complement the analysis of textual data with two case studies focusing on peace processes in two countries – Cambodia and Bosnia and Herzegovina. In our case studies, we seek to assess also whether formal human rights institutions included in peace agreements live up to expectations set up by participants in the peace negotiation processes.

We find that peace agreements rely primarily on NHRIs and to a lesser extent on international human rights institutions as part of peace implementation processes. A few regional institutions have played key roles in a small number of cases – for instance, the OSCE in Bosnia and Herzegovina is the regional body that supports human rights monitoring efforts

and the creation of an NHRI. Overall, regional institutions are mentioned in a small number of cases and are rarely used to implement human rights commitments found in the agreements. However, negotiating parties in peace agreements prioritise the creation of NHRIs over other forms of institutionalisation of human rights protection. To that end, peace agreements provide more formal safeguards for NHRIs, as opposed to regional or global institutions. When functional, NHRIs can monitor government action and report on continued human rights violations. They can be instrumental in advising government on the domestic implementation of international human rights law and the system of international human rights treaties the state can join. In addition, they are formal structures that seek to safeguard the local implementation of liberal norms and advance the implementation of peace by supporting transitions to democracy. Despite being increasingly important actors on the domestic stage, as sole independent bodies charged with human rights promotion and protection, we have much to learn about the work that these bodies carry out in conflict and post-conflict settings.

Our study seeks to contribute to the scholarship on peacebuilding and human rights, by providing insights into the main roles that formal human rights institutions included in peace agreements play to implement human rights provisions and promote sustainable peace through the advancement of liberal democratic norms. There are varying views on what to prioritize in peace processes and peace agreements with a focus on conflict resolution, stressing an end to large-scale violence, while maintaining a focus on human rights and advocating for justice as necessary conditions to achieve peace. Mertus has stressed that these two approaches are far more complementary than conflictual as both ultimately seek to maximise human dignity and minimise harm,⁹ and the inclusion of human rights institutions in peace agreements is a manifestation of an approach that seeks to end violence while also creating mechanisms that will foster a sustainable and just peace. Peacebuilding literature and practice furthermore highlight the importance of these sorts of structures to solidify peace.¹⁰ Our study examines

how peacebuilding theory can be operationalised in peace agreements. Our data show that human rights implementation in post-conflict settings is largely viewed as a localised process, as peace agreements rely on NHRIs to implement human rights provisions with some support from international organisations primarily at the start. Establishing an NHRI can also be seen as an important signal that states can send to the international community of liberal democratic states about their intention to respect human rights and, ultimately, implement peace and transition to liberal democracy.

While existing research has offered valuable insights into the choices governments make to establish NHRIs and to grant them certain structural designs,¹¹ our understanding of the roles that peace agreements play in the creation and design of human rights institutions is very limited. Our study addresses this gap by offering a systematic analysis of all provisions that create NHRIs or utilise formal international or regional institutions and endow them with protection powers that respond to problems endemic in post-conflict contexts. We illustrate our analysis based on quantitative data with two case studies – Cambodia and Bosnia and Herzegovina – where peace agreements specify different roles for international, regional and national human rights institutions in peace implementation processes. Given the prevalence of human rights institutions among institutions charged with human rights monitoring in peace agreements, our two cases vary in their creation of a human rights institution. While the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina was created with international support and played a crucial role in the post-conflict context of transition to democracy, the peace agreement in Cambodia relied exclusively on the intervention of international institutions for safeguarding the protection of human rights in the post-conflict period.

In what follows, we introduce briefly the different types of institutions charged with human rights promotion and protection at the international, regional, and national levels,

focusing on the main formal bodies that are central to human rights implementation and monitoring in post-conflict settings. We also review the existing literature examining the use of human rights institutions in peace agreements and situate our own contribution. We then map out and analyse how human rights institutions at three distinct levels of the international systems have been used in peace agreements from 1990 to 2015 and through case studies discuss their impact on the institutionalization of human rights in the conflict area.

Human Rights Institutions and Peacebuilding

At its core, peacebuilding consists of a set of processes aimed at supporting and solidifying peace. More recently, peacebuilding has also come to be associated with specific interventions to support democratization, economic growth, good governance, institutions, and human rights.¹² Similarly, our understanding of human rights has developed from a framework intended for the protection of individuals to incorporate the promotion of dignity and social justice.¹³ As conceptions of human rights and peacebuilding have expanded, the incorporation of human rights into peace processes has also evolved. The immediate post-Cold War period from 1990-2000 was an era of experimentation with approaches to human rights and resolving conflicts that pushed back against the notion that the main issue in peace negotiations was reaching an agreement, and any normative concerns came second.¹⁴ The decade from 2000-2010 saw an increased institutionalization of human rights in peacebuilding, and the expansion of a peacebuilding architecture and international legal system embraced and often prioritized human rights.¹⁵ Finally, most recently, we have witnessed an era of disillusionment, motivated by a focus on the failure of peacebuilding as well as the re-examination of several perceived successes, such as Bosnia and Burundi.¹⁶

Human rights are essential for peace with justice, as they contribute to more sustainable responses to structural violence and set the preconditions for peace.¹⁷ The link between conflict resolution and human rights is complex and fluid, responding to transformations in the nature of violent conflict and also to changes in the relationship between peace and justice, which has moved away from competition and increasingly more in the direction of partnership.¹⁸ Even so, it is important to note that, human rights can be seen as controversial in states affected by conflict and have recently been side-lined as a result of a broader loss of legitimacy for liberal forms of peacebuilding.¹⁹ Nevertheless, human rights impact all stages of conflict. During the intensification of conflict, human rights violations are often one of the causes of conflict and failure to address them contributes to the intensification of conflict and the failure of prevention efforts. During armed conflicts, human rights violations can be both an inevitable consequence of violence and a component of wartime strategy, as well as inform international interventions in conflicts. At the stage of conflict resolution, the mechanisms that peace agreements put in place to implement human rights, with the aim to change patterns of destructive relationships and generate healthier patterns of interaction, are key to the sustainability of peace.²⁰ Furthermore, the application of human rights principles can assist with processes of negotiation about the formation of government and other societal and political issues that go beyond the realm of rights.²¹

In an effort to build in human rights to peace agreements and thus contribute to sustainable peace, parties participating in negotiations often build in safeguards for human rights enforcement, by calling on existing international, regional, and national institutions to provide assistance or by creating new national and local institutions mandated with monitoring and implementing human rights. How and to what effect for post-war peace, are human rights institutions provisions integrated in peace agreements? To address this twofold question, we

begin with a discussion of the main types of human rights institutions – international, regional, or national – most commonly included in peace agreement.

Institutions for human rights – a brief historical overview

International and regional institutions for human rights

At the international level, the UN, primarily through the Office of the High Commissioner for Human Rights (OHCHR), is arguably the most prominent actor that has increasingly sought to advance the promotion and protection of human rights. OHCHR supports NHRIs through the Paris Principles, which set the framework for NHRI accreditation and promotion.²² It also monitors human rights in specific countries and around particular thematic issues and can utilise special procedures to appoint special rapporteurs, independent experts, and working groups. As will be discussed in the case of Cambodia, the impetus to utilise special procedures can come from peace agreements.²³ At the regional level, different parts of the world have created specific formal instruments for the promotion and protection of human rights. Europe is the region with the most developed institutional architecture of human rights promotion and protection. The Council of Europe adopted the European Convention on Human Rights and established the European Court of Human Rights as a powerful formal instrument of complaint handling and legal enforcement.²⁴ In addition, the European Union (EU) and the OSCE have incorporated human rights in their work through an expansive system that seeks to impose common regional human rights standards.²⁵ These policies are clearly exhibited through efforts to secure peace and consolidate democracy and political stability in post-conflict settings in former Yugoslavia and in states that are members of the European Neighbourhood Policy.

Africa has a comparatively less effective regional architecture of human rights institutions. The Organization of African Unity (OAU) adopted the African Charter on Human

and Peoples' Rights and established the African Commission on Human and Peoples' Rights²⁶, and its successor organization, the African Union (AU), has continued this work by integrating human rights norms into its constitutive documents and creating additional institutions, such as the African Peer Review Mechanism as an institution to evaluate state compliance with human rights and other principles.²⁷ There has been a significant shift in the human rights and peace and security norms and institutions from the OAU to the AU.²⁸ This has meant stronger structures and policies to manage conflict on the continent and at the same time promote human rights, but it has not necessarily translated into increased effectiveness.

The work done by regional organisations to end conflict and support human rights through an end to violent conflict and the promotion of human rights standards in their regional spheres is important, and many regions have at least some institutional bodies that address human rights and violent conflict. Despite that, as our analysis will show, peace agreements rarely specify the key roles that formal regional institutions play in implementing human rights provisions in post-conflict settings. Rather, peace settlements envision regional institutions primarily as bodies with important supporting roles in relation to domestic and local actors, or regional organisations support peace agreements in broader ways, for example, through acting as a guarantor or providing mediation support, and not specifically in supporting implementation of human rights provisions.

National Human Rights Institutions

Since the early 1990s, the international community, endorsed by the UN, established NHRIs as a novel institutional solution to implementing domestic human rights commitments. NHRIs are independent regulatory bodies, such as human rights commissions or ombudsmen, mandated to facilitate the independent implementation of international human rights norms in domestic policymaking.²⁹ NHRIs play the dual role of promoting and protecting rights at the

domestic level, assisting governments in key efforts to address adequately a range of rights-related challenges, such as the protection of fundamental rights, and social and political rights. Since then, widespread support has triggered a norm cascade on a global scale, with NHRIs increasing from twenty structures before 1992 to approximately 130 NHRIs in 2015.³⁰ The UN played an important role in the global diffusion of NHRIs, primarily through the formulation of the Paris Principles and a transnational network that offers monitoring and support mechanisms for peer members.

Most academic research to date has explored why and how states decide to establish human rights ombudsmen and commissions.³¹ Additionally, a number of academic articles and institutional reports investigate the effectiveness of NHRIs in carrying out their mandates and improving human rights outcomes.³² Our data from a global dataset of peace agreements indicates their key role in conflict and post-conflict processes, yet our understanding of the roles that NHRIs play in conflict and post-conflict areas is very limited. As institutional reports of activity indicate, NHRIs may help lay the groundwork for a phase of transitional justice by monitoring and recording violations during periods of conflict and transitional periods.³³ NHRIs can also investigate allegations of violations and provide remedies to victims, promote respect for the rule of law, and strengthen democracy and sustainable peace,³⁴ but the effectiveness of these activities and how NHRIs are built into the implementation of human rights provisions in peace agreements has not been thoroughly explored. The next section sets out our findings of how national, regional, and international human rights institutions are used in peace agreements. We examine both the type of institution and the activities it is mandated to carry out.

Mapping out human rights institutions in peace agreements

We draw on the PA-X peace agreements database and use a qualitative content analysis of agreements with provisions for human rights promotion and protection through formal institutions. According to PA-X, a peace agreement is broadly defined as any formal, public document that is produced after discussions with parties to the conflict and agreed by at least some of them.³⁵ The PA-X database encompasses a broad conception of human rights and applies it to human rights institutions. An agreement with an NHRI is conceived as any agreement with a provision for a national body that monitors human rights and includes provisions that establishes a new NHRI or institutions for promoting democracy, human rights, and equality.³⁶ Agreements with regional or international human rights institutions either mention new regional or international human rights bodies mandated to monitor human rights and/or, more often than not, reference an existing institution.³⁷

We found that 502 of the 1,518 agreements in the PA-X database contain general references or rhetorical commitments to human rights or rule of law.³⁸ Beyond these general commitments, PA-X also codes for references to specific human rights categories, such as civil and political rights, socio-economic rights, or detention procedures. Additionally, PA-X codes for references to mechanisms that will define human rights standards, specifically human rights frameworks, and structures that will support human rights, specifically national as well as regional and international human rights institutions.³⁹ There are vast differences in how peace agreements approach human rights, both in terms of the commitments they make and the mechanisms through which the provisions are implemented. This study focuses on one particular category to support the implementation of human rights provisions, human rights institutions, as understanding their use in peace agreements provides valuable insights into when and how human rights mechanisms that operate at different levels of the global system

are included in processes of peacebuilding and the implementation of peace. There are 44 peace agreements mentioning of international and regional human rights institutions and 99 peace agreements referencing national human rights institutions as formal safeguards for rights prevention in the post-conflict transition (Tables 1 and 2). There is some overlap between these two groups, and in total we analyse a total of 126 peace agreements from 1990 through 2015 that mention international, regional and/or national human rights institutions.

According to the principles of qualitative content analysis, systematic text analysis is based on the creation of categories of text that are initially identified and then revisited. Such categories consist of ‘idea clusters’ that share features and resist reductive essentialization.⁴⁰ Textual data was coded in two main stages. First, text was coded according to the thematic category that was the most appropriate, grouping references to human rights institutions in one of three main categories: international, regional, and national institutions. Coding was done manually by two coders and followed the same set scheme for all three types of institutions, seeking to capture the main roles that these institutions were given in peace agreements. Second, coders identified the main types of roles for each type of institution in peace agreements (Tables 1-3). To ensure that our coding was systematic, we carried out inter-coder reliability tests. The inter-coder reliability test produced a coefficient of agreement of 0.85, which is in the high range of acceptable agreement.⁴¹

Table 1: The main roles of international human rights institutions included in peace agreements

International institutions	
Monitoring human rights	19
Collaboration with NHRI	8
Make recommendations on human rights and promote human rights	7
Establish local observatories/ offices	4
Investigate human rights	4

Collaboration/ participation with truth commissions/ commissions of inquiry	2
Collaboration/ participation with ceasefire commission	2
Observe or participate in human rights processes (conferences or administrative assistance)	1

*There are 40 peace agreements that reference international human rights institutions. Some peace agreements stipulate that these institutions undertake multiple functions. Some agreements also mention national, regional, and international human rights institutions or some combination.

Table 2: The main roles of regional human rights institutions included in peace agreements

Regional institutions	
Observe or participate in human rights processes (conferences or administrative assistance)	6
Monitoring human rights	5
Establish local observatories/ offices	2
Make recommendations on human rights and promote human rights	2
Investigate human rights	2
Collaboration/ participation with truth commissions/ commissions of inquiry	2
Collaboration/ participation with ceasefire commission	1

*There are 16 peace agreements that reference regional human rights institutions. Some peace agreements stipulate that these institutions undertake multiple functions. Some agreements also mention national, regional, and international human rights institutions or some combination.

Table 3: The main roles of national human rights institutions included in peace agreements

National human rights institutions: Roles	
Establishment/creation of NHRI	73
Monitoring and reporting on human rights situation on the ground	47
Human rights protection (broadly)	29
Create or implement new legislation	29
Specialised or local rights protection	27
Advise government on human rights and peace	26
Educate and inform communities about human rights	21
Human rights promotion (broadly)	20
Contribute to creation of new institutions as part of peace process	11
Participates in ceasefire	1

*There are 99 peace agreements that reference national human rights institutions. Some peace agreements stipulate that these institutions undertake multiple functions. Some agreements also mention national, regional, and international human rights institutions or some combination.

Analysis and discussion: broad trends in the data

Of the 126 agreements we analysed, the first settlement to mention the creation of an NHRI was the *Acuerdo Gobierno Nacional-EPL y PCC – ML, Labores, Belmira, Antioquia* in Colombia, dated 28th September 1990. The first peace agreement to mention a regional institution mandated with human rights implementation and monitoring was the *Statement of Principles for New Constitutional Arrangements for Bosnia and Herzegovina (Carrington-Cutiliero Plan of March 1992)*, dated 18th March 1992, which mentioned that representatives of the European Commission would take an active part in the establishment of a human rights monitoring commission in the aftermath of the conflict. The first agreement to mention the involvement of an international organisation – the UN – in monitoring human rights is the *Statement of the Five Permanent Members of the Security Council of the United Nations on Cambodia Incorporating the Framework for a Comprehensive Political Settlement of the Cambodia Conflict*, dated 28th November 1990.

The largest group of human rights institutions mentioned in the 126 peace agreements we coded are human rights commissions and ombudsmen with national and local remits of human rights promotion and protection. International human rights institutions were mentioned in 40 agreements, regional human rights institutions were mentioned in 16 agreements, and national human rights institutions are mentioned in 99 agreements. The bodies classified as international human rights institutions consist of various UN bodies, including the UN Security Council, OHCHR, and UN monitoring teams attached to peacekeeping missions. Regional human rights institutions were used in several regions, notably Europe, the Americas, and Africa. For example, in Europe, the presence of the OSCE is considered central to the early stages of human rights monitoring and support for the creation of domestic institutions

mandated to promote and protect human rights in Bosnia and Herzegovina.⁴² In what follows, we will present in greater detail the specific roles that peace agreements have granted each type of human rights institution. We will offer also a discussion of these findings, situating them in existing scholarship.

National human rights institutions as pivotal actors in peace processes

NHRIs are the most prevalent type of institution to which participating parties in peace agreements turn, to secure the implementation of human rights in a post-conflict setting. Our analysis has found that peace agreements from 1990 until 2015 make greater reference to NHRIs compared to regional and international human rights institutions and have assigned them a total of 10 different types of broadly defined roles in a post-conflict setting (Table 3). The most prevalent mention of NHRIs focuses on the need to establish new domestic bodies in post-conflict settings in which no such institution existed at the time the peace agreement was signed. However, some peace agreements go further and mandate that new or existing NHRIs carry out specific tasks.

Whether they recommend the establishment of new human rights bodies or they mandate an expansion of existing ombudsmen, the majority of peace agreements make written provisions to endow these institutions with powers to operate domestically in collaboration with national and local government and international organisations. They can suggest to national governments new legislation that ensures the promotion and protection of human rights. When other new institutions are needed, to secure the implementation of specialised rights and the consolidation of democracy, NHRIs can make such recommendations to government and can support their establishment and operations. Additionally, they can offer specialised advice to governments about the importance of human rights for peace and also of committing to ratifying and implementing regional and international human rights treaties. A

2001 agreement to address conflict in Afghanistan provides an example of an NHRI provision. It mandates that the Interim Administration establish, “an independent Human Rights Commission, whose responsibilities will include human rights monitoring, investigation of violations of human rights, and development of domestic human rights institutions”.⁴³ The role peace agreements ascribe to NHRIs again demonstrate how national frameworks are prioritised for implementation of human rights even while they draw on international support and human rights treaties to shape their institutional development and approach to human rights promotion and protection.

Moreover, NHRIs can play important promotional roles in society at large. In addition to monitoring rights violations on the ground, handling individual complaints and reporting on them to the public and international fora, a large number of peace agreements make provisions to endow NHRIs with the powers to educate the government and the public on human rights. Although collaboration with NHRIs is a key element in securing the protection of rights in transitional societies, peace agreements offer a wider scope of activity for regional and global institutions involved in human rights implementation after conflict. The variety of roles assigned to NHRIs by peace agreements is indicative of how NHRIs can provide institutional support for continued mediation of conflict-related issues. In many conflicts, parties may not be able to reach an agreement on difficult issues, such as accountability for crimes committed during the conflict or return of displaced populations. NHRIs create an institutional space where these discussions can continue to take place throughout a longer transition period as trust is gradually built and societies begin to recover.⁴⁴

It is of course important to note that conflict parties endorsing the creation of an NHRI do not necessarily succeed to establish an independent and effective institution in the post-conflict phase. Domestic commitment to human rights implementation can be weak, and conflict parties can agree to create an NHRI as a strategy to signal their intention to comply

with the terms of the agreement and then lack follow-through. On the other hand, the establishment of a new NHRI can also be seen as a marker of national sovereignty and commitment to human rights at the national level. Its inclusion in a peace agreement can signal the intention of the conflict parties to take human rights matters ‘into their own hands’ and lead the peace process implementation. As intermediaries between international institutions and local communities, NHRIs can play a dual role of, on the one hand, advancing liberal democratic norms at the local level and, on the other hand, of helping post-conflict national governments to assert their sovereignty by supporting the establishment of a domestic institution with a human rights mandate rather than relying exclusively on international support in the post-conflict stage.

International human rights institutions as key drivers of peace processes

Our analysis identified eight main roles for international human rights institutions (Table 1). The main roles assigned to international human rights institutions in peace agreements are monitoring human rights, collaborating with the NHRI, making recommendations, investigating human rights abuses, establishing local offices, and/or collaborating with ceasefire or reconciliation commissions. It is unusual for international human rights institutions to have primary responsibility for the implementation of human rights provisions. There are exceptions to this, notably Cambodia as the case study will show, but they primarily work within a larger context that includes local and national human rights institutions. In Colombia, for instance, a 2000 agreement stated that “the presence and activity of national and international organisations and agencies for the defence and promotion of human rights will be permitted, subject to coordination between the parties”.⁴⁵ This provision is within a broader section that seeks to create human rights groups in communities, make commitments on particular human rights issues, and explicitly allow for the work of the International Red Cross.

In Kenya, a 2008 agreement calls for the UN and AU to provide the Kenya Commission of Inquiry with information on crimes committed during post-election violence, make the information public, and provide support to the Commission.⁴⁶ The agreement does not provide specifics on the support needed, but it does highlight the important supporting role that regional and global institutions will be playing to facilitate the Commission's activities.

PA-X data shows that peace agreements mention a range of international organisations as important actors in a post-conflict setting – OHCHR, international criminal tribunals, UN representatives, UN representatives from other agencies, UN peacekeeping missions, special rapporteurs. These actors most often play a supplemental or complementary role. Our analysis finds that peace agreements make provisions for the creation of dedicated national and local human rights commissions and, importantly, they embed them in a network of diverse regional and international institutions to offer them support. For instance, the Lomé Agreement to end conflict in Sierra Leone created a Human Rights Commission that could seek technical and material assistance from the “UN High Commissioner for Human Rights, the African Commissioner of Human and People's Rights, and other relevant international organisations”.⁴⁷ While peace agreements do not specify in great detail the roles of international and regional human rights institutions, they often acknowledge the key role that these transnational actors play in supporting peace implementation processes and democratic transitions. They also base human rights standards on regional and international frameworks. In our estimation, the broader focus of most peace agreements is to specify the national and local institutional parameters for human rights promotion and protection using international guidelines and position international and regional institutions to offer material and technical support while also adding legitimacy to national institutions through the inclusion of international representation.

Regional human rights institutions as supporters of peace processes

Despite being important actors in conflict resolution and post-conflict stabilisation more generally, our analysis finds that peace agreements generally grant regional institutions the least prominent role in human rights promotion and protection. In the few instances where regional human rights institutions were formally utilised in peace agreements they were tasked with monitoring human rights, establishing local offices, observing human rights processes, making recommendations, investigating human rights, and/or collaborating with the ceasefire commission. Out of a total of 16 agreements that mention regional human rights bodies, 11 include them alongside international human rights institutions.

Two examples of regional organisations in a peace agreement are the OSCE in Bosnia and Herzegovina as well as the OAU in the conflict between Eritrea and Ethiopia. First, the UN Security Council calling upon the OSCE along with international organisations to closely monitoring human rights situation in Bosnia and Herzegovina. UNSC Resolution 1088, “calls upon the authorities in Bosnia and Herzegovina to cooperate fully with the United Nations Commission on Human Rights, the OSCE, the United Nations High Commissioner for Human Rights and other intergovernmental and regional human rights missions or organisations to closely monitor the human right situation in Bosnia and Herzegovina”.⁴⁸ Second, the OAU consulted with the conflict parties in Ethiopia and Eritrea and recommended a framework agreement where, “in order to contribute to the establishment of a climate of confidence, the OAU, in collaboration with the United Nations, deploys a team of Human Rights Monitors in both countries”.⁴⁹ These two examples adhere to the trend of regional and international human rights bodies being mentioned in tandem. When regional human rights bodies are mentioned separately, it is often for a specific task. For instance, in Honduras, the Inter-American Institute of Human Rights is mandated to preside over the Truth Commission,⁵⁰ and in South Sudan, the

agreement stipulates that individuals identified by the AU Commission of Inquiry for South Sudan as having committed atrocities cannot participate in the transitional government.⁵¹

Comparative analysis

The human rights bodies that are the most prevalent in the 126 peace agreements with provisions for human rights institutions are NHRIs, including human rights ombudsmen and commissions, followed by international organisations with human rights mandates; whereas regional organisations figure much less prominently. Without a doubt, the human rights actors with the strongest presence at the negotiating table are international organisations, such as the UN Security Council, the OHCHR and the UN monitoring teams attached to peacekeeping missions. Motivated by the implementation of peace through the creation of institutional frameworks that promote democracy and liberalism, international institutions seek to put in place domestic institutions that advance liberal democratic norms and assist with their implementation on the ground.⁵² They may also seek to include NHRIs that have a provision for international financial and technical assistance to ensure international bodies can remain engaged in the implementation of the peace agreement.⁵³

UN-based agencies with human rights mandates advance liberal democratic solutions to the resolution of military conflict by integrating the creation of NHRIs in the terms of peace agreements, which may help to explain their prevalence in peace agreements compared to international and regional human rights institutions. As sole independent bodies charged with the promotion and protection of human rights at the domestic level, NHRIs act as regulatory intermediaries⁵⁴ between the UN and national governments. In this sense, they represent the international institutions' response to the compliance gap in human rights, as their 'local solution' to providing oversight of the implementation of governments' human rights obligations endorsed by peace agreements. In most cases of early transition from violent

conflict to peace, NHRIs require the financial and capacity support of international institutions and more experienced peer NHRIs in other countries. As is the case with the NHRI in Bosnia and Herzegovina, international support continued for the first decade of institutional existence. Ultimately, the UN's longer-term vision is that NHRIs will consolidate as fully functional national bodies that work independently from national governments while they receive support from their executives and maintain good working relationships with them.⁵⁵

Peace agreements grant human rights institutions specific tasks aimed at improving human rights outcomes after the cessation of conflict. Even when the responsibility of carrying out these tasks are shared by some institutions, the nature of human rights duties does show variation across type of institution and also over time. While international institutions and NHRIs are granted powers to monitor human rights and are expected to work in partnership, their roles in monitoring processes are different. More often than not, international institutions have the strongest presence in the human rights-focused work during the cessation of the conflict, while only very few regional institutions are granted any human rights responsibilities in the text of peace agreements. In other words, human rights monitoring is ensured by more than one type of institution present on the ground, but international institutions tend to exercise their monitoring duties much more during the first years of post-conflict transition. They also coordinate and assist with the creation of national observatories and NHRIs, with the view to consolidating their position in the domestic institutional architecture and entrusting them with full monitoring and reporting duties on the in-country human rights situation. As the case studies will demonstrate, despite their prevalence in peace agreements, the persistence of these formal institutional solutions in the success of these institutional solutions, be they short-term or long-term, varies significantly from country to country. Years after a peace agreement is signed, NHRIs show varying degrees of independence from their governments and from international actors. For instance, the Northern Ireland Human Rights Commission acted with

greater independence from government from the very start and has carried out its responsibilities effectively since inception. At the same time, the Colombian Defensor took longer to consolidate itself as a human rights body after conflict, becoming one of the most effective NHRIs in the region.⁵⁶

All three types of human rights institutions specified in peace agreements have promotional and advisory powers in their post-conflict mandated duties. Peace agreements indicate that international and regional bodies are actively involved in supporting local actors and national governments in the transition away from violent conflict. However, once established and functional, NHRIs are meant to work with governments to design human rights strategies, advise them in the process of signing the ratifying international human rights treaties, and passing relevant national legislation. In other words, the creation of NHRIs is a measure to safeguard the sustainability of human rights promotion and the protection of human rights even after the end of the immediate post-conflict period. If the ultimate goal is to aid with the consolidation of democracy and the respect of human rights after the end of conflict, NHRIs represent the strongest institutional safeguard that peace agreements put in place to oversee this process domestically and locally.

Case Studies

In this section, we present two case studies, which help us offer a more in-depth analysis of how and why particular institutions were included in the peace agreements as well as the intended impact these institutions had on implementation of the human rights provisions. Given the predominant role that national bodies play in peace agreements, we have selected two country cases that are similar with respect to the inclusion of regional and/or international institutions in human rights promotion and protection in a post-conflict setting. At the same time, the two cases differ as one of them does not make provisions for the creation of a national

human rights institution. The selection of the two cases is based on variation across the institutional provisions for human rights implementation at the domestic level, allowing us to gather comparative insights into the different roles that national, regional and international institutions can be granted in peace processes..

The case studies of Cambodia and Bosnia Herzegovina allow us to trace causal processes that explain the roles that international and national human rights institutions can play in the implementation of peace agreements and in the efforts to create quality and lasting peace. They also allow us to understand more about why either international or national institutions were chosen in a particular context. A highly internationalised peace process, in Cambodia, the 1991 peace agreement relies only on international institutions to define the safeguards for implementing peace and integrating human rights in the post-conflict transition process. Whereas the General Framework Agreement for Peace in Bosnia and Herzegovina (the ‘Dayton Peace Accords’) in 1995 was an accord with strong international presence but stipulated the creation of a human rights ombudsman as the main domestic instrument ensuring human rights promotion and protection after the end of the conflict. The Institution of the Human Rights Ombudsman of Bosnia and Herzegovina owes its early existence and mandate expansions to the financial and capacity support of international institutions, like the OSCE and the Council of Europe; however, the Ombudsman’s has grown stronger and more formally independent from international support in recent years, despite overall lack of political will to implement recommendations by the Human Rights Ombudsman and to recognise human rights as domestic norms that are part and parcel of peace implementation and state building.

Cambodia

In the case of Cambodia, international human rights implementation mechanisms were mandated because of the history of atrocities and continuing divisions amongst the conflict

parties that necessitated a neutral actor to implement the peace agreement. The Khmer Rouge government came to power in April 1975 and controlled the country until January 1979. During this period, the government committed atrocities and human rights abuses against wide swaths of Cambodian society. Vietnam invaded Cambodia on 9 January 1979 and then installed a regime known as the People's Republic of Kampuchea (PRK).⁵⁷ After Vietnam's intervention, world powers lined up to support sides in the conflict. China, the United States (US), and states in Southeast Asia supported the Khmer Rouge while the Soviet Union supported the Vietnam-backed PRK.⁵⁸

There were limited, unsuccessful attempts to resolve the conflict in the early 1980s. International negotiations that involved the conflict parties, the UN, and major regional and international powers began in Jakarta in 1988 and then moved to Paris. However, the negotiations in August 1989 ended without a peace agreement when the parties could not resolve the central question on power-sharing.⁵⁹ After the failure of the first round of talks, the Permanent Five (P5) members of the UNSC met to outline the parameters of an agreement to resolve both the internal and internationalized aspects of the conflict. The underlying approach was to, "enable the Cambodian people to determine their own political future through free and fair elections organized and conducted by the United Nations in a neutral political environment with full respect for the national sovereignty of Cambodia".⁶⁰

The P5 statement led to a second round of negotiations in Paris in 1990 leading to the Comprehensive Settlement Agreement in 1991. The overall structure of the agreement is important for understanding the institutions put in place to monitor the human rights provisions. The agreement created the Supreme National Council (SNC) as the legitimate source of authority in Cambodia throughout the transition period, and then the SNC delegated all necessary powers to the UN to ensure implementation of the agreement.⁶¹ In this way, the agreement sought to guard Cambodia's independence and sovereignty through the creation of

the SNC while also bringing in a neutral, outside actor to implement the provisions of the agreement. Guarding Cambodia's independence was necessary because of the history of outside actors in the conflict, and a neutral actor to implement was necessary because of the continuing divisions in the country.

The parties to the agreement also recognized that Cambodia's history of atrocities and divisions required special measures to protect human rights. The signatories agreed that all people in Cambodia should enjoy the "rights embodied in the Universal Declaration of Human Rights and other relevant international human rights instruments".⁶² The UN Transitional Authority in Cambodia (UNTAC) was given responsibility for fostering respect for human rights during the transition period, and after the end of the transition period, the UN Commission on Human Rights was tasked with continuing to monitor the human rights situation and appoint a Special Rapporteur if needed.⁶³ Specifically, UNTAC was tasked with "(a) the development and implementation of a programme of human rights education to promote respect for and understanding of human rights; (b) general human rights oversight during the transitional period; and (c) the investigation of human rights complaints and where appropriate, corrective action".⁶⁴

UNTAC was deployed from February 1992 to September 1993. Its overall mandate was to implement the Comprehensive Settlement Agreement. To fulfil the human rights provisions, UNTAC undertook activities in three areas. First, it advocated for the SNC to abide by international human rights standards and reviewed existing judicial and penal systems in accordance with international standards. The SNC subsequently ratified the International Covenant on Civil and Political Rights, International Covenant on Economic, Social, and Cultural Rights, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, and other international human rights conventions in 1992. Second, UNTAC conducted human rights education campaigns. Educational materials, such as posters

and leaflets, were distributed throughout the country, and training on human rights was integrated into the Cambodian education system and into some university curriculum. UNTAC also worked extensively with civil society organisations to provide training, support, and material and financial assistance. Finally, UNTAC investigated human rights complaints that occurred during the transition period and deployed human rights officers to provinces across Cambodia, although UNTAC human rights officers were not granted access to all areas, notably those controlled by the Khmer Rouge.⁶⁵

UNTAC had some success in improving the human rights situation in Cambodia, but its impact was limited due to a lack of enforcement powers, being denied access to areas controlled by certain groups, and an extremely small staff dedicated exclusively to human rights issues.⁶⁶ However, even after the end of the UNTAC mandate, the UN left a legacy of UN institutions in Cambodia to continue to address human rights concerns. The UN Centre for Human Rights in Cambodia was established by a resolution adopted by the UN Commission of Human Rights on 19 February 1993. The UN Centre was to continue implement a program of human rights education, support human rights groups in Cambodia, and assist the new Cambodian government with meeting its human rights obligations through a number of initiatives.⁶⁷ Furthermore, a UN Special Rapporteur with a country-specific mandate for Cambodia was established in 1993 pursuant to the provisions in the Paris Agreements.⁶⁸ The Rapporteur was mandated to guide the UN human rights presence in Cambodia, assist the Government of Cambodia to protect human rights, and report to the UN General Assembly on the situation in Cambodia.⁶⁹ The mandate of the Special Rapporteur was extended in September 2017 for a further two years.⁷⁰

The mandate-holders who served as Special Rapporteurs faced many issues in their roles. For instance, there is very little guidance from the UN on the role and procedures for country-specific mandate holders. The Code of Conduct for Special Procedures Mandate-

holders of the Human Rights Council was released in 2007 but still provides only vague direction, particularly for mandate-holders working in post-conflict states. There are also resource constraints in terms of funding and staff and limited support from the UN Human Rights Council (or the predecessor Human Rights Commission) to implement the Rapporteur's recommendations.⁷¹ Despite these challenges, the various Special Rapporteurs under the Cambodia mandate have contributed to establishing the Khmer Rouge Tribunal to bring perpetrators of past atrocities to account, developing legislation to protect and promote human rights, and supporting Cambodian human rights non-governmental organisations.⁷²

Overall the case study of Cambodia demonstrates when international human rights institutions are needed as well as the strengths and weaknesses of these types of institutions. Due to the internationalized nature of the conflict, history of atrocities, and continuing divisions within the country, the Comprehensive Political Settlement mandated an international actor to implement the agreement. When it came to human rights provisions, specific UN bodies were mandated to undertake particular tasks to safeguard and promote human rights. Even though an international institution implemented the human rights provisions, the UN continually worked with local organisations and pushed for national implementation of human rights treaties, again showing the importance of human rights implementation at the local and national levels. The major strength of the UN was that it was an outside, neutral party, but it also had restricted access due to lack of buy-in from some parties at the national level and limited resources.

Bosnia and Herzegovina

The most devastating European conflict since World War II, the Bosnian War led to the displacement of over 2 million people and an estimated loss of 100,000 lives.⁷³ After years of unsuccessful peace efforts, world powers gathered in the Contact Group applied intense

pressure on the leaders of the three sides to attend the negotiations in Dayton, Ohio. The conference took place from 1–21 November 1995, under the leadership of US Secretary of State Warren Christopher and negotiator Richard Holbrooke, in addition to a number of different international representatives, such as the EU Special Representative Carl Bildt and the First Deputy Foreign Minister of Russia Igor Ivanov. The main participants from the region were the President of the Republic of Serbia Slobodan Milošević (representing the Bosnian Serb interests), President of Croatia Franjo Tuđman, and President of Bosnia and Herzegovina Alija Izetbegović with his Foreign Minister Muhamed Šaćirbeg.

The Dayton Accord includes an Agreement on Human Rights, Annex 6,⁷⁴ which lays the legal and institutional foundation for the implementation of human rights as part of peace building. The signatories commit to respecting the rights and freedoms provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols as well as a number of international human rights agreements stipulated in the Accord. Moreover, Article XIII of the Agreement calls for the need to promote and encourage the activities of non-governmental organisations and international organisations for the protection and promotion of human rights.⁷⁵ Parties to the Agreement agreed to inviting the UN Commission for Human Rights, the OSCE, the UN Commissioner for Human Rights and other intergovernmental or regional human rights missions or organisations to monitor closely the human rights situation in the country, through the establishment of local offices and the support of observers and rapporteurs.⁷⁶

In addition to treaty obligations, the parties consented to establish a Commission on Human Rights mandated to assist in honouring obligations under the Dayton Agreement. The newly minted Commission would consist of two parts – the Office of the Ombudsman and the Human Rights Chamber – with human rights investigative and monitoring powers. While the Ombudsman had powers of investigation and complaint handling, the Chamber had judicial

powers and would function as a human rights tribunal issuing legally binding decisions.⁷⁷ Although financially independent by design, with guaranteed support from the state of Bosnia and Herzegovina, the Commission continued to be dependent on full financial and capacity support from the OSCE and other international bodies for over a decade after its inception.

To ensure independence from domestic political interference, the Office of the Ombudsman was established on the condition that institutional leadership would be international. The Dayton Agreement states that the Chairman-in-Office of the OSCE would be in charge of appointing the ombudsman, after consultation with participating parties. In line with the Resolution 6 of the Council of Europe, the Human Rights Chamber would be composed of fourteen members, out of which four were to be appointed by the Federation of Bosnia and Herzegovina, two by the Republika Srpska, and ten by the Committee of Ministers of the Council of Europe, after domestic consultations. The Law on the Ombudsman⁷⁸ was adopted in 2000, and then amended in 2002 and 2006, to broaden the scope of mandated powers to encompass more promotional duties, change the institutional structure to streamline activities, and align the institution with the Paris Principles more generally. The Dayton Accord also recommends a transfer of institutional leadership from international organisations to institutions of Bosnia and Herzegovina five years later. However, the Ombudsman continued to be led by internationally appointed Commission members for nearly a decade, in 2004, when ownership of the institution was fully transferred to Bosnia and Herzegovina.

The increase in formal strength over the years has not been matched by an equivalent increase in institutional effectiveness. Arguably the most significant limitation to institutional effectiveness is the lack of political will to take into consideration, respond and implement the Ombudsman's recommendations. Although public institutions' responsiveness to the work of the Ombudsman has increased in recent years, the long-standing foreign ownership of the Human Rights Commission has decreased the overall level of trust in the relevance of the

institution in the socio-political context of Bosnia and Herzegovina. Despite enjoying more widespread acceptance in recent years, human rights have historically not been regarded as inherently national values, but rather were considered more as part of a foreign liberal democratic agenda that seeks to shape domestic politics through the international development agenda.

The creation and consolidation of the Ombudsman office in Bosnia and Herzegovina offers a valuable example of how human rights governance in a post-conflict setting depends on the key involvement of all three types of formal institutions included in the peace agreement. Created by international and regional bodies in 1995, the Ombudsman was led by OSCE representatives with broad international support for over 10 years, when it was successfully transferred to national leadership. Although the NHRI has operated in a domestic environment that is relatively hostile to human rights, it has strengthened its powers over the years and has successfully garnered increasing support for its human rights promotion and protection activities from the government as well as the wider public. Importantly, it has been the sole body that has continued to grow over the years, mostly due to extensive international support. Other proposals included in the peace settlement, such as the establishment of entity human rights institutions, did not garner sufficient international support to be implemented.

Conclusion

Over the years, many comprehensive peace settlements have developed into complex agreements that aim not only to put an immediate end to violent conflict, but also to secure the implementation of sustainable peace and the transition to democracy, through including provisions to secure political inclusion, transitional justice as well as the promotion and protection of human rights. This is in line with a conception of peacebuilding that aims to promote positive peace through the institutionalisation of particular liberal norms. Existing

scholarship has significantly advanced our understanding of why human rights play important roles in peace agreements and conflict resolution more broadly,⁷⁹ but most empirical evidence to date consists of single case studies or comparative small-n analyses.

This article seeks to contribute to existing scholarship by undertaking an original comparative analysis of the formal institutional provisions that peace agreements make for human rights promotion and protection after the end of violent conflict. Our multi-level analysis of peace agreement provisions for international, regional, and national institutions used textual data from the PA-X peace agreements database to generate original quantitative data by identifying and coding the different roles that peace agreements grant to human rights institutions and the different types of human rights institutions that are prescribed in agreements.

Our analysis seeks to contribute to the literature on peacebuilding and human rights showing that parties to peace agreements tend to turn primarily to NHRIs and, to a lesser extent, to international institutions with very limited use of regional institutions to ensure human rights monitoring, promotion and protection after the end of conflict. When mentioned, the main role of international and regional institutions is to take part in human rights monitoring when domestic context does not facilitate the creation of an NHRI and, when an NHRI can be established, to offer support to institutions with a human rights remit. We find that peace settlements seek to localise human rights norms through the creation of NHRIs, as the preferred formal safeguard for the domestic implementation of rights, monitoring government behaviour with respect to human rights and shaping the domestic processes of peace stabilisation. When fully operational and independent from political interference, NHRIs can advise governments on national policies and their compliance with human rights and can assist with the process of national integration in the global community of liberal democratic states through the ratification of international human rights treaties. In other words, peace agreements seek to

make formal institutional arrangements that can guarantee more sustainable peace through a transition away from conflict and in the direction of liberal democracy.

This study has sought to enhance our understanding of how human rights institutions at different levels of the global system are used in peace agreements, while the two case studies from Bosnia Herzegovina and Cambodia show why particular institutions were chosen for those contexts and how the use of these institutions impacted on the promotion of human rights in different post-conflict contexts. In Cambodia, the highly internationalised conflict and past atrocities necessitated the presence of an international human rights institution, but this institution also had limitations on where it could access and limited buy-in from national actors. In Bosnia and Herzegovina, an NHRI that was strongly supported by regional and international actors was established and over the course of a decade evolved into an independent body that is gaining support. Without a doubt, further analysis is needed to fully understand the institutional mechanisms that peace agreements put in place to safeguard human rights implementation after the end of conflict. With our data, however, we seek to advance our knowledge of human rights and peacebuilding, by offering systematic insights into the complex provisions that peace agreements make for formal institutions to carry out human rights promotion and protection in post-conflict contexts.

¹ There are two quite competing concepts of how to write a peace agreement. A ‘contract’ approach which is about foreseeing and providing for all eventualities, and a ‘road map’ approach which sets in place an agenda.

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